

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215462

DATE: June 25, 1984

MATTER OF: KLN Steel Products Company

DIGEST:

Rejection of protester's bid as nonresponsive on basis that protester's bid failed to acknowledge material amendment was proper despite protester's allegation that late receipt of these amendments by GSA was not protester's fault, but due to late mailing by GSA and slow delivery by United States mail. The procuring activity is not an insurer of the delivery of bidding documents to prospective bidders and there is no allegation that GSA deliberately attempted to prevent protester from competing.

KLN Steel Products Company (KLN) protests the rejection of its bid as nonresponsive under solicitation No. FNPS-51-5128-A-4-20-84 issued by the General Services Administration (GSA). GSA rejected KLN's bid because KLN's bid failed to acknowledge three amendments to the solicitation, one of which made material changes to the solicitation. All three amendments were issued at least a week before bid opening and the amendment making the material changes was issued 11 days before bid opening. KLN alleges that the rejection of its bids was improper since the late receipt by GSA of these amendments was not the fault of KLN, but due to late mailing of the amendments by GSA and slow delivery by the United States mail, thereby not allowing KLN adequate time to respond.

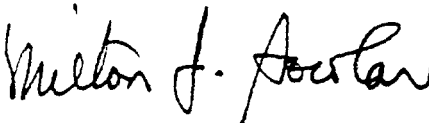
We summarily deny the protest.

The general rule is that the procuring activity is not an insurer of delivery of bidding documents to prospective bidders; thus, the bidder bears the risk of loss or delay in receiving its copy of an amendment. See CMP Incorporated, B-209179, October 29, 1982, 82-2 CPD 390. If a bidder does not receive a material amendment to a solicitation in a timely manner and the failure is not the result of a conscious and deliberate attempt on the part of the agency to

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preclude the bidder from participating in the competition, the bid must be rejected as nonresponsive. CMP Incorporated, B-209179, supra. In the present case, there is neither an allegation by KLN nor any evidence of any deliberate effort on the part of GSA to preclude KLN from competition.

Since the protester's initial submission affirmatively demonstrates that the protest is without legal merit, we have decided the protest without requesting an agency report. X-Cel Constructors, Inc., B-206746, April 5, 1982, 82-1 CPD 311.


for Comptroller General
of the United States